

will remand the decision to the district engineer with specific instructions to review the administrative record, and to further analyze or evaluate specific issues. If the district engineer determines that the effects of the district engineer's reconsideration of the administrative record would be narrow in scope and impact, the district engineer must provide notification only to those parties who commented or participated in the original review, and would allow 15 days for the submission of supplemental comments. Where the district engineer determines that the effect of the district engineer's reconsideration of the administrative record would be substantial in scope and impact, the district engineer's review process will include issuance of a new public notice, and/or preparation of a supplemental environmental analysis and decision document (see 33 CFR 325.7). Subsequently, the district engineer's decision made pursuant to the division engineer's remand of the appealed action becomes the final Corps action. Nothing in this rule precludes the agencies' authorities pursuant to Section 404(q) of the Clean Water Act.

§331.11 Unauthorized activities.

Permit denials and declined individual permits associated with after-the-fact permit applications are appealable actions for the purposes of these regulations. If the Corps accepts an after-the-fact permit application, an administrative appeal of a permit denial or declined individual permit may be filed and processed in accordance with these regulations subject to the provisions of paragraphs (a), (b), and (c) of this section.

(a) *Initial Corrective Measures.* If the district engineer determines that initial corrective measures are necessary pursuant to 33 CFR 326.3(d), an RFA for an appealable action will not be accepted by the Corps, until the initial

corrective measures have been completed to the satisfaction of the district engineer.

(b) *Penalties.* If an affected party requests, under this Section, an administrative appeal of an appealable action prior to the resolution of the unauthorized activity, and the division engineer determines that the appeal has no merit, the responsible party remains subject to any civil, criminal, and administrative penalties as provided by law.

(c) *Tolling of Statute of Limitations.* Any person who applies for an after-the-fact permit, where the application is accepted and processed by the Corps, thereby agrees that the statute of limitations regarding any violation associated with that application is tolled until one year after the final Corps decision, as defined at 33 CFR 331.10. Moreover, the applicant for an after-the-fact permit must also memorialize that agreement to toll the statute of limitations, by signing an agreement to that effect, in exchange for the Corps acceptance of the after-the-fact permit application, and/or any administrative appeal (See 33 CFR 326.3(e)(1)(v).) No after-the-fact permit application or administrative appeal will be accepted until such written tolling agreement is furnished to the district engineer.

§331.12 Exhaustion of administrative remedies.

No affected party may file a legal action in the Federal courts based on a permit denial or declined individual permit until after a final Corps decision has been made and the appellant has exhausted all applicable administrative remedies under this Part. The appellant is considered to have exhausted all administrative remedies when a final Corps decision is made in accordance with §331.10 of this Part.